

# **The Design and Use of Fishing Community and Regional Fishery Association Entities in Limited Access Privilege Programs**

Joshua S. Stoll and Mark C. Holliday



U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service

NOAA Technical Memorandum NMFS-F/SPO-138  
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## **EXECUTIVE SUMMARY**

The Magnuson-Stevens Fishery Conservation and Management Act authorizes the creation of Fishing Community (FC) and Regional Fishery Association (RFA) entities in Limited Access Privilege Programs (LAPPs). These entities represent one way to anchor limited access privileges in place-based and interest-based communities to help maintain their long-term access to federal fisheries.

Responding to requests for guidance from Regional Fishery Management Councils (Councils) and industry stakeholders, this document was prepared to clarify the purpose and requirements for the creation of these entities, providing perspective on: (1) considerations for developing required eligibility criteria; (2) an approach to defining the requirements for a given community sustainability plan; and (3) a process and general timeline for creating FC and RFA entities within a new or existing fishery or ecosystem management plan;

This document compiles information from a range of existing programs. It draws examples specifically from the Bering Sea and Aleutian Islands American Fisheries Act pollock cooperative program, Western Alaska Community Development Quota Program, Gulf of Alaska Community Quota Entity Program, Western Pacific Community Development Program, Northeast Multiple Species Sector Program, and Maine Groundfish Permit Bank Program. Although not all of these examples are from LAPPs, they provide a useful starting point to consider how FC and RFA entities could be designed and implemented, and they highlight the extensive experience of the Councils in developing similar management systems.

This document is not prescriptive, nor is it a step-by-step manual for creating these entities. Instead, it lays out a general framework for developing FC and RFA entities and discusses ways to work toward the requirements outlined in the statute in a way that is understandable. In doing so, this document aims to increase the accessibility of these entities, making it easier for NMFS (for Atlantic Highly Migratory Species), Councils and stakeholders alike to assess their appropriateness during the design and development of new LAPPs and revisions of existing LAPPs.

## **LIST OF ACRONYMS**

AA – Assistant Administrator  
AFA – American Fisheries Act  
Amd – Amendment  
ACL – Annual Catch Limit  
BO – Biological Opinion  
BSAI – Bering Sea and Aleutian Islands  
CDQ – Community Development Quota  
CFA – Community Fishing Association  
CQE – Community Quota Entity  
DEIS – Draft Environmental Impact Statement  
DOC – Department of Commerce  
EA – Environmental Assessment  
EIS – Environmental Impact Statement  
FC – Fishing Community  
FIS – Fishery Impact Statement  
FEIS – Final Environmental Impact Statement  
FMP – Fishery Management Plan  
FONSI - Finding of No Significant Impact  
IFQ – Individual Fishing Quota  
IRFA – Initial Regulatory Flexibility Analysis  
ITQ – Individual Transferable Quota  
LAPP – Limited Access Privilege Program  
MSA – Magnuson-Stevens Fishery Conservation and Management Act  
NEPA – National Environmental Policy Act  
NMFS – National Marine Fisheries Service  
NGO – Non-governmental organization  
NOA – Notice of Availability  
NOAA – National Oceanic and Atmospheric Administration  
NOI – Notice of Intent  
OFR – Office of the Federal Register  
OMB – Office of Management and Budget  
PRA – Paperwork Reduction Act  
RFA – Regional Fishery Association  
RIR – Regulatory Impact Review  
ROD – Record of Decision  
SBA – Small Business Administration  
SIA – Social Impact Assessment  
TAC – Total Allowable Catch





# THE DESIGN AND USE OF FISHING COMMUNITY AND REGIONAL FISHERY ASSOCIATION ENTITIES IN LIMITED ACCESS PRIVILEGE PROGRAMS

## INTRODUCTION

### *Objective*

This document aims to clarify the purpose of and requirements for creating Fishing Community (FC) and Regional Fishery Association (RFA) entities within the context of Limited Access Privilege Programs (LAPPs). Subject to the constraints in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable law, this document provides guidance for Regional Fishery Management Councils (Councils) and other relevant stakeholders considering the use of FC and RFA entities as a mechanism to distribute fishing privileges to fishing communities. Building off the analysis presented in the NMFS 2007 technical memo *The Design and Use of Limited Access Privilege Programs* (Anderson and Holliday 2007), proceedings from the January 2011 workshop *Catch Shares and Commercial Fishing Communities* (NMFS 2011), and case studies from around the country, the material here is intended to help managers and resource users better understand the design elements of FC and RFA entities and how these tools can be used to support community-based objectives in LAPP fisheries. This information may also prove useful to those considering the use of FC- and RFA-like entities, such as permit banks, fishing cooperatives, Community Fishing Associations,<sup>1</sup> and Community Supported Fisheries.<sup>2</sup>

### *Structure of Document*

Since the reauthorization of the MSA in 2007, representatives of Councils, industry, NGOs and Congress have sought guidance from the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) on the design and use of FC and RFA entities (e.g., Boxer et al. 2011). This document responds to these requests, while considering the complexity and variability, of regional fisheries management.

This document is divided into three main sections. The first two sections follow the structure of the language outlined in Sections 303A(c)(3) and (4) of the MSA, which authorizes “fishing community” and “regional fishery association” entities. For convenience, the statutory language of these sections is reprinted in Appendix A. These sections place particular emphasis on defining eligibility criteria and establishing community sustainability and regional fishery association plan requirements by exploring relevant examples in existing fisheries. The third section outlines a hypothetical process and timeline for establishing an FC or RFA entity as part of a new fishery management plan (FMP) or amendment to an existing plan. This process is used to identify key considerations that need to be addressed early in the FMP or amendment process by Councils, NMFS, and industry participants.

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<sup>1</sup> Both the Pacific and North Pacific Councils have explored the use of FC- and RFA-like entities called Community Fishing Associations (CFA) (PFMC 2009, NPFMC 2013b)

<sup>2</sup> Community Supported Fisheries are direct marketing initiatives in which fishermen and fishing cooperatives sell seafood directly to consumers.

## ***Defining Fishing Community and Regional Fishery Association Entities***

This document treats Section 303A(c)(3) and (4) FC and RFA entities as management units, viewing them as a subset of fishing communities and regional fishery associations. The primary difference between FC and RFA entities relates to allocation: FC entities are eligible to receive limited access privileges during the initial allocation process, whereas RFA entities must receive these privileges by way of transfer from a limited access privilege holder after the initial allocation process has occurred or hold privileges that members contribute (MSA Section 303A(c)(4)(A)(v); Appendix A, Line: 48-51). This difference is important in terms of how these two entities can be implemented but, despite this distinction, many of the eligibility and participation parameters defined in the MSA are the same or very similar for both. Given this similarity, FC and RFA entities are treated interchangeably in this document, except where key differences exist and require further discussion.

These entities were added to the MSA in 2007 to provide additional assistance to fishing communities and community-based associations to acquire and maintain limited access privileges in LAPP fisheries (U.S. Senate Committee on Commerce, Science, and Transportation 2006). Although these terms are used broadly by the general public, they have a narrower meaning in Sections 303A(c)(3) and (4). In the MSA, “limited access privileges” can be granted to individuals, “fishing community” and/or “regional fishery association” entities. The addition of limited access privileges held by FC and RFA entities in Sections 303A(c)(3) and (4) appear to have been driven by Congress’ interest in supporting small-scale and community-based operations. In a 2006 report prepared by the U.S. Senate Committee on Commerce, Science, and Transportation on the MSA, the Committee writes:

*These provisions were created in response to the concerns of communities and shoreside businesses around the country over the economic harm that could result from consolidation of quota in IFQs and similar programs... In particular, the Committee recognizes that many small, poor coastal communities lack the resources to enter fisheries that may be subject to future LAPPs, and they have often been overlooked in allocation decisions.*

This explanation aligns with the allocation requirements specified in Section 303A(c)(5). The section directs Councils or the Secretary of Commerce to “consider the basic cultural and social framework of the fishery...through the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities,” “include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocation,” and “ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program.” This language (e.g., Sections 303A(c)(3), (4), and (5)), coupled with National Standard 8, provides a clear signal to the Councils and NMFS to consider community safeguards that support small-scale and community-based interests.

However, Councils have yet to adopt Section 303A(c)(3) and (4) processes to establish fishing communities and regional fishery associations entities as a mechanism to limit or restrict consolidation, anchor limited access privileges in vulnerable fishing ports, and provide

opportunities for owner-operators and new entrants to access limited access privileges long-term. These entities have not yet been implemented for a number of reasons. One reason is that fishing communities and associations have sought and identified alternative mechanisms to acquire and maintain fishing privileges such as risk pools and permit banks. These entities are not expressly identified in MSA, but several of them are described and used as examples in the first section of this document.

Fishing communities have also shied away from setting up 303A(c)(3) and (4) processes because the language in Sections 303A(c)(3)(A)(ii) and 303A(c)(4)(B) is seen as inflexible and draconian. These sections direct the Secretary of Commerce to revoke fishing privileges granted under the section for failure to comply with any of the requirements of the Section 303A(c)(3) and (4) community sustainability or regional fishery association plan requirements. Stakeholder perception that FC or RFA entities could lose their fishing privileges for failing to comply with any of the plan requirements, even clerical errors (e.g., failing to sign or date a document) has been a concern. This impediment is discussed further in the second section of this document, along with a potential solution.

Another reason Section 303A(c)(3) and (4) processes have not been established is because Councils have worked with NMFS to develop other, less complex regulatory safeguards for fishing communities. For example, the Gulf of Alaska Rockfish Program requires the catcher vessel sector to deliver fish to a shoreside processor located within the geographic boundaries of the City of Kodiak (NMFS 1996; 50 CFR 679.7(n)(5)(iv) and (n)(6)(ix)). Similarly, the Bering Sea and Aleutian Islands Crab Rationalization Program has regional delivery requirements for quota share and processor quota share (NMFS 2005; 50 CFR 680.7(a)(9)). These requirements reduce the risk that fishing privileges will migrate out of geographic areas where fishing communities have historically depended on the fisheries. The halibut and sablefish IFQ program in Alaska also has safeguards to support small-scale operators. In particular, it has been designed to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. To accomplish this goal, all sablefish and halibut quota share and IFQ are categorized according to four vessel size classes from which the IFQ halibut and sablefish may be fished (50 CFR Part 679.4; NMFS 1996). Having vessel size restrictions ensures that the IFQ program does not radically change the structure of the fleet that was in place at the time the IFQ program was implemented, and the restrictions have prevented the fishery from being dominated by any particular vessel category.

The FC/RFA terminology also poses a dilemma for the Councils and NMFS, further explaining why Section 303A(c)(3) and (4) processes for FC and RFA entities have not been adopted. The notion of a fishing community itself is particularly complex because it is entangled in the public and political discourses on fisheries. Put simply, the term “fishing community” is widely used, but fishing communities are difficult to define in practice because they are seldom, if ever, discrete units. In contrast to the individual fisherman, permit, or vessel, fishing communities often lack discretely defined boundaries. The multitude and diversity of coastal communities in the United States illustrates this dilemma. Not only are there many communities, but membership changes as communities adapt, whether they are place-based communities (e.g., Kodiak, Alaska, and Port Orford, Oregon) or interest-based communities (e.g., American Fisheries Act (AFA) pollock cooperatives, Bering Sea groundfish Amendment 80 cooperatives, the Bering Sea freezer

longliner cooperative, and the numerous crab harvesting cooperatives formed under the Bering Sea crab rationalization program). These adaptations are the result of changing social, regulatory, environmental, and economic conditions (NMFS 2011). Further, fishing communities often overlap or are nested within other communities. These inherent challenges make fishing communities more difficult to manage and regulate (e.g., GMFMC 2008). This difficulty is reflected in the ways fishery managers, policymakers, and Congress have dealt with the terms in other places.

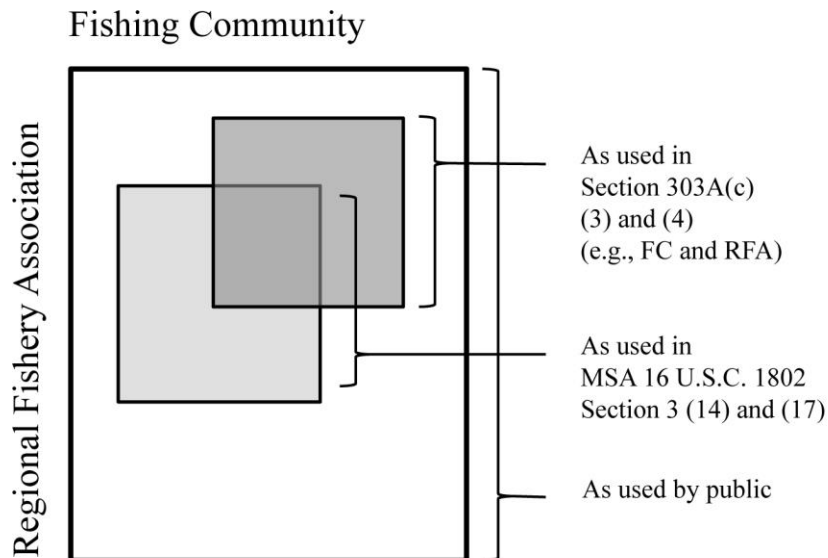
In the MSA, for example, a “fishing community” is defined broadly as “a community which is substantially dependent or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such a community” (Section 3(17)) and a “regional fishery association” is defined as “an association formed for the mutual benefit of members to meet social and economic needs in a region or subregion; and comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery” (Section 3(14)).

The broadness of these definitions depends on how the phrase “substantially dependent” is understood and interpreted. In practice, however, “substantially dependent” has proven difficult to delimit and is the subject of ongoing debate within the social science and regulated communities (Patricia M. Clay 2013, per. comm.). Many Council deliberations reflect the challenges associated with addressing the term “substantially dependent.” For example, the Gulf of Mexico Fishery Management Council has observed that “there are no standard guidelines for delineating the boundaries of a fishing community” and after “extensive ethnographic research into social networks and sense of place, the exact boundaries around these communities cannot be identified” (GMFMC 2005). Instances like this speak to the challenge of distinguishing substantially dependent or engaged communities from those that are neither.

In this paper, FC and RFA entities are used to describe a discrete management unit for purposes of granting fishing privileges to particular sectors of the industry (e.g., small vessel operators, rural communities, indigenous and historical users, etc.) under Section 303A(c)(3) and (4) in order to achieve regional objectives. Section 303A(c)(3) and (4) FC and RFA entities are nested within definitions of fishing community and regional fishery association in the definition section of the MSA (i.e., Section 3(14) and 3(17)) (Figure 1). Where FC and RFA entities are considered and implemented, regionally appropriate criteria need to be established such that they limit eligibility and ensure limited access privileges are allocated in a way that is consistent with Section 303A(c)(5), the participation requirements outlined in Section 303A(c)(3) and (4), and the definitions in Section 3 of the MSA. In general layman’s terms, as long as the criteria do not discriminate between residents of different states (Section 301(4)), FC and RFA entities can be composed of any group of United States citizens, or they can be a corporation, partnership, or other entity established under the laws of the United States or any States, or permanent resident aliens (Section 303A(c)(1)(D)). This includes, but is not restricted to, incorporated towns and counties. When Councils establish eligibility criteria they should incorporate their criteria for determining compliance with the term “substantially dependent.” In this way, the Section 303A(c)(3) and (4) processes serve as one of a number of key tools available to Councils exploring ways to maintain and support small vessel operators, new entrants, and fleet diversity

and to fulfill goals and requirements specified in FMP documents and the MSA (e.g., National Standard 8, Section 303A(c)(5)).

**Figure 1. Definition of Fishing Community and Regional Fishery Association Entities**



Within Section 303A(c)(3) and (4), the terms FC and RFA are used to denote distinct management units associated within LAPPs. These units are likely to be just a subset of all place-based and/or interest-based fishing communities within a Council's jurisdiction. Fishing communities and regional fishery associations are also generic terms in wide use by the public without reference to the statutory meaning. The term fishing community defined in Section 3(17) is also applied in a non-LAPP context in Section 312 to outline fisheries disaster relief provisions.

The language in Section 303A (Appendix I, Lines 1-72) establishes a mechanism by which Councils can allocate limited access privileges to fishing communities and regional fishery associations. Key to this process is that Councils:

1. Define eligibility;
2. Determine reporting requirements for community sustainability and regional fishery association plans; and
3. Consider participation criteria listed in Section 303A.

## SECTION I

### *Establishing eligibility criteria*

Fishing communities must meet four requirements to participate in a LAPP as an FC and six to qualify as an RFA. These requirements are specified in Section 303A(c)(3) and (4):

#### Fishing Community –

- *Be located within the management area of the relevant Council;*
- ***Meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;****[Emphasis added]*
- *Consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council management area; and*
- *Develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.*

#### Regional Fishery Association –

- *Be located within the management area of the relevant Council;*
- ***Meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;****[Emphasis added]*
- *Be a voluntary association among willing parties with established by-laws and operating procedures;*
- *Consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;*
- *Not be eligible to receive an initial allocation of limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic] members contribute; and*
- *Develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.*

The requirement that deals with eligibility criteria for FC and RFA entities (see bold text above or Appendix I, Lines 6-7, 42-43) has been a source of some discussion. It requires Councils to develop eligibility criteria that are approved by the Secretary before fishing privileges can be allocated to FC entities or acquired by RFA entities. This section deals with this issue, considering a range of eligibility criteria a Council may choose to consider and adopt. It focuses

on the eligibility criteria themselves, leaving a discussion about the administrative process and timeline until the third section.

Councils have not yet established eligibility criteria specifically for FC or RFA entities. However, a number of programs (including those in non-LAPP fisheries) have been considered or established that allow entities to hold, maintain, and manage fishing privileges for multiple individuals. For example, the Pacific Fishery Management Council has adopted a new term and has explored the use of “Community Fishing Associations” (CFAs) in the Pacific Coast Groundfish Limited Entry Trawl Fishery. These entities were intended to be similar to FC/RFA entities in that they would have eligibility requirements, operational standards, and sustainability plans (PFMC 2010). There is another Pacific Coast groundfish fishing entity called a bycatch “risk pool” that holds and uses individual allocations of species quota of overfished species on a collective basis. The risk pool is a non-regulatory voluntary arrangement in which individuals pool and manage fishing privileges to avoid non-target species. The intent of the arrangement is to reduce financial risk and transaction costs for individuals.<sup>3</sup> Permit banks represent a third mechanism that has been used to hold fishing privileges on behalf of industry participants. Examples include privately created and managed permit banks such as the Cape Cod Commercial Fisheries Trust, and state government-managed permit banks in Maine, New Hampshire, Massachusetts, and Rhode Island.

This document evaluated the Bering Sea and Aleutian Islands American Fisheries Act pollock cooperatives; Western Alaska Community Development Quota Program; Gulf of Alaska Community Quota Entity Program; Western Pacific Community Development Program; Northeast Multiple Species Sector Program; and the Maine Groundfish Permit Bank. Although these examples are not all from LAPP fisheries, they provide a useful reference points to consider the types and scope of criteria that Councils could include in establishing eligibility criteria for FC or RFA entities.

Each of the six examples has eligibility criteria that restrict participation in different ways and for different purposes. Table 1 lists selected eligibility criteria from the programs, organized by program objective.

#### *Bering Sea and Aleutian Islands American Fisheries Act Pollock Cooperatives*

The Bering Sea and Aleutian Islands American Fisheries Act (AFA) pollock cooperatives were authorized in 1998 under the AFA (Public Law 105-277). “In the offshore sector, allocations were made to catcher and catcher/processor vessels which subsequently formed separate cooperatives. In the inshore sector, allocations were made to plant-specific cooperatives in which vessels were bound to particular plants” (Kitts and Edwards 2003:360). The Act authorizes the pollock industry to form cooperative entities that are eligible to receive a fixed share of the annual total allowable catch (TAC) (Matulich et al. 2001). The Bering Sea and Aleutian Islands (BSAI) pollock cooperatives include 10 groups: an offshore catcher vessel cooperative, a catcher-processor cooperative, a mothership cooperative, and seven inshore catcher vessel cooperatives. These cooperatives allow the catcher vessels and processors to manage their cooperative’s annual share of the pollock TAC internally. The cooperatives also work together to reach agreements on

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<sup>3</sup>The Fort Bragg Central Coast Risk Pool produced an annual report in 2013 (Labrum and Oberhoff 2013).

bycatch reduction, over-harvest of allocation, area closures, and data management. Advocates of the program cite the ability of cooperatives to improve fishing practices and economic efficiency while reducing bycatch.

#### *Western Alaska Community Development Quota Program*

The Western Alaska Community Development Quota (CDQ) program began in 1992 in Western Alaska. The program allocates a percentage of BSAI quotas for groundfish, prohibited species, halibut, and crab to eligible communities. The purpose of the CDQ program is outlined in MSA 305(i)(1)(A): to provide eligible communities with the opportunity to participate and invest in fisheries and to support economic development, to alleviate poverty and provide economic and social benefits for residents, and to achieve sustainable and diversified local economies. Unlike FC and RFA entities, eligible villages are explicitly identified in MSA 305(i)(1)(D) under the CDQ provisions. These villages must form a board of directors, elect a panel representative, manage their investments in a predetermined way, and submit an annual statement of compliance (Balsiger 2010). Each village must also prepare a “community development plan,” as described in Section 305(i)(1)(J), describing how it intends to: (1) harvest its share of fishery resources allocated to the program; and (2) use its share of fisheries resources allocated to the program, and any revenue derived from such use, to assist its members’ villages with projects to advance economic development.

#### *Gulf of Alaska Groundfish Community Quota Entity Program*

In 2004 NMFS approved Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska to improve the effectiveness of the Individual Fishing Quota (IFQ) Program (NMFS 2004) and to mitigate the flow of IFQ from rural villages in the Gulf of Alaska. The North Pacific Council and NMFS amended the existing IFQ program regulations by revising the eligibility criteria for halibut and sablefish quota so that eligible communities in the Gulf of Alaska could establish nonprofit entities to purchase and hold quota on behalf of rural communities in the region, and to make that quota available to residents through annual leases. These entities, called Community Quota Entities (CQEs), may hold a maximum of 21 percent of the total halibut and sablefish quota in specified regulatory areas. Unlike the Western Alaska CDQ program, few eligible CQE villages have participated because they have not been able to access capital to purchase fishing privileges (Olson 2011). A CQE can represent more than one eligible community, but no community can be represented by more than one CQE. The CQE itself receives transferred halibut or sablefish quota share on behalf of an eligible community and leases the resulting IFQ to fishermen who are residents of the eligible community. To be eligible, a community must be fishing under the Gulf of Alaska Groundfish FMP; meet certain population, access, and historic fishery participation criteria; and be on a list adopted by the Council (NPFMC 2013b). Prospective communities that appear to meet the eligibility criteria must apply directly to the North Pacific Council to be included on the list. If approved, the North Pacific Council modifies the list of eligible communities through a regulatory amendment. Forty-two communities in the Gulf of Alaska qualify as eligible to purchase quota share. These eligible communities may then designate a new nonprofit entity to hold quota share on behalf of that community.



### *Western Pacific Community Development Program*

Section 305(i)(2)(A) of the MSA authorizes a Western Pacific community development program to help indigenous populations gain access to local fisheries. Like the FC and RFA entities, eligibility for this program requires several components, including location, Council criteria, and a Community Development Plan that must be submitted to the Western Pacific Council and the Secretary of Commerce. This program also requires that groups be descended from indigenous aboriginal people, and that they “not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries” (305)(i)(2)(B)(iv). In May 2010, the Western Pacific Council developed a “Program Process” outlining how indigenous groups can apply for the program. This action was taken to encourage the use of the program. This process includes what should be included in a Community Development Plan (but is not specified in the MSA as it was for the Western Alaska CDQ program): goals, justification for involvement, names and involvement of aboriginal people, vessel information, impacts on target stocks and the ecosystem more generally, impacts on enforcement and administration, and impacts on communities (WPFMC 2010).

### *Northeast Multiple Species Sector Program*

The Northeast Multispecies Fishery Management Plan was developed in 1986 to manage fishing mortality and rebuild overfished stocks. The New England Council approved Amendment 16 to expand a small-scale program authorized by Amendment 13 in 2004. Sectors are groups of three or more limited access permit-holders (without overlapping ownership) who voluntarily enter into a contract and agree to certain fishing restrictions in exchange for being allocated a quota (NEFMC 2009). However, sectors are not allocated predetermined portions of the TAC. Instead, fishermen are granted Potential Sector Contributions (PSC) based on their historical fishing (permit history). Fishermen cannot use these as actual allocations unless they join a sector, and the amount of quota granted to a sector is the sum of the PSCs of all current members. This means that as membership changes (sector membership must be renewed annually) so does the amount of quota granted to a particular sector .

Further, the quota granted to the sector is not automatically available to individual members in the amount of their PSC. The manner of allocation within the sector is set by the members. Some of these sector characteristics are similar, though not identical, to RFA entities. Fishermen who participate in a sector are exempt from many of the effort control measures in place for the common pool (i.e., all limited access multispecies fishermen not in a sector) such as days-at-sea (DAS) restrictions and trip limits for species with an allocated quota. To form a sector, each group must submit a proposal to the New England Council at least 1 year before proposed operations. Approved sectors must annually submit a sector operations plan to NMFS by September 1. NMFS must approve the operations plan for the sector to be authorized to fish and be allocated quota for the following fishing year, which starts on May 1 (NMFS 2012).

### *Maine Groundfish Permit Bank*

A permit bank is a non-profit or government entity that manages fishing permits for the purpose of providing fishing privileges (such as Northeast multispecies days-at-sea or quota) to qualifying fishing vessels. Permit banks are designed to sustain or create new fishing opportunities for people and fishing vessels that meet specific qualifications such as vessel size, gear type, fishing location, or port/community. They can be designed to mitigate the consolidation of fishing effort commonly associated with the implementation of catch share programs by grounding permits (and their associated quota) in a given community (The Nature Conservancy 2011).

For example, the Maine Groundfish Permit Bank was set up in August 2010 through a Memorandum of Agreement between NOAA and the Maine Department of Marine Resources. It set up a pilot limited access multispecies permit bank program in which NOAA provides funding through a federal grant award to the State of Maine for the purpose of starting a bank of Northeast multispecies limited access fishing vessel permits. The goals for the program include: securing continued access to fishery resources for local small-scale fishermen, creating and protecting sustainable local fisheries, supplementing existing access by fishermen in small Maine communities, and mitigating the effects of fishing effort consolidation on small-scale fishermen and rural fishing communities (NMFS 2010). Initially the Maine Permit Bank operated as a sector in the Northeast Multiple Species Sector Program and inclusively leased out quota. However, in 2012 the New England Council approved Amendment 17 to expressly authorize NOAA-sponsored, state-operated permit banks to be allocated and trade quota, without forming or joining a sector. This facilitated the operation of state permit banks by eliminating some of the administrative burden of sectors that were unnecessary for a state permit bank.

**Table 1. Examples of Eligibility Criteria from Existing Programs**

Topic	Example	Fishery	Criteria
<b>1. Ensure vessels of a certain length and catch history maintain access to the fishery</b>			
Vessel size/ catch history	American Fisheries Act (AFA)	Bering Sea/Aleutian Islands pollock	Must be less than 60 feet in length overall and have delivered at least 40 metric tons of pollock or must have delivered at least 250 metric tons of pollock or be listed in the AFA
	Maine Groundfish Permit Bank	Northeast Multispecies Groundfish limited access fishery	Must be not more than 55 feet in registered length overall, according to the vessel baseline specifications as documented in the NMFS vessel permit database at the time the transaction application is submitted
<b>2. Ensure rural communities retain access to quota<sup>4</sup></b>			
Population size	Gulf of Alaska CQE	Halibut & Sablefish	Must have a population of less than 1,500 persons based on the 2000 United States Census
Road access	Gulf of Alaska CQE	Halibut & Sablefish	Must lack direct road access to communities with a population greater than 1,500 persons
<b>3. Ensure recipients have not previously violated fisheries regulations</b>			
Previous violation(s)	Maine Groundfish Permit Bank	Northeast Multispecies Groundfish limited access fishery	Must not have substantial federal permit sanctions or major violations of any federal fishing regulations
<b>4. Ensure allocation is directed to communities without existing fishing capacity</b>			
Lack of existing capacity	Western Alaska CDQ Program	Bering Sea/Aleutian Islands fisheries	Must not have previously established harvesting or processing capacity sufficient to support substantial participation in the BSAI groundfish industry
	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must not have had harvesting, processing, or marketing capability sufficient to support substantial participation in fisheries in the area
Economic barrier	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must have economic or other barriers that have prevented full participation in the western Pacific fisheries

<sup>4</sup>The Maine Groundfish Permit Bank initially had a requirement that participants must reside in, and/or operate his/her fishing vessel from, a community with a population of no more than 30,000 residents. This requirement was later removed.

Topic	Example	Fishery	Criteria
<b>5. Ensure indigenous or native communities have access to the resource</b>			
Heritage	Western Alaska CDQ Program	Bering Sea/Aleutian Islands fishery	Must be recognized by the U.S. Secretary of the Interior as a Native village under the Alaska Native Claims Settlement Action
	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must consist of community residents descended from aboriginal people indigenous to the western Pacific area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the western Pacific
Residence	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must consist of community residents who reside in their ancestral homeland
Customary knowledge	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must have knowledge of customary practices relevant to fisheries of the western Pacific
<b>6. Ensure participants comply with terms of allocation</b>			
Sign contract	Maine Groundfish Permit Bank	Northeast Multispecies Groundfish limited access fishery	Must agree to and sign a contract with ME DMR agreeing to fish in a responsible and sustainable manner
Develop written plan	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must develop and submit a Community Development Plan to the Western Pacific Council and NMFS
<b>7. Ensure recipients are vessel operators</b>			
Owner/operated	Maine Groundfish Permit Bank	Northeast Multispecies Groundfish limited access fishery	Must own and materially participate in the operation of a fishing vessel permitted to fish in the federal limited access Northeast multispecies fishery
<b>8. Ensure communities maintain active connections to fisheries</b>			
Active participation	Western Alaska CDQ Program	Bering Sea/Aleutian Islands fisheries	Must be residents and have conducted at least half of their commercial or subsistence activities in the Bering Sea and Aleutian Islands subregions
	Maine Groundfish Permit Bank	Northeast Multispecies Groundfish limited access fishery	Landed at least 1000 lb of groundfish in one of previous 3 years

Topic	Example	Fishery	Criteria
<b>9. Ensure historic communities can continue to participate</b>			
Historic dependence on fisheries	Gulf of Alaska CQE	Halibut & Sablefish	Must have historic participation in the halibut and sablefish fisheries
	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must have a traditional dependence on fisheries of the western Pacific
Existing license	American Fisheries Act	Bering Sea/Aleutian Islands Pollock	Must be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council <sup>5</sup>
<b>10. Ensure certain geographic areas have access to allocation</b>			
Specific geography	Western Alaska CDQ Program	Bering Sea/Aleutian Islands fisheries	Must be located within 50 nautical miles of the Bering Sea coast
	Western Pacific Community Development Program	Fisheries in the Western Pacific Regional Fishery Management Area	Must be located within the Western Pacific Regional Fishery Management Area/be located in American Samoa, the Northern Mariana Islands, Guam, or Hawaii (Western Pacific Area)
	Gulf of Alaska CQE	Halibut & Sablefish	Must be located in the Gulf of Alaska and specifically designated on a list adopted by the Council and included in the rule
	Gulf of Alaska CQE	Halibut & Sablefish	Must have direct saltwater access
<b>11. Ensure quota holding entities are created for the purpose of holding fishing privileges</b>			
Date established	Gulf of Alaska CQE	Halibut & Sablefish	CQE must have been incorporated after April 10, 2002, the date of final Council action

<sup>5</sup> This is not the case for the Aleutian Islands catcher vessels less than 60 ft. There is also a set-aside for the community of Adak.

## *Considering key decision points*

A range of similarities and differences across the criteria are listed in Table 1. For example, three of the six programs have at least one criterion that aims to protect a certain size class of vessels in a given fishery, whereas only one program has a provision to ensure that recipients are owner operators. Within these six programs, 25 requirements fit within 11 general themes. The four most common themes are:

- Ensure fishing privileges are redirected to communities without existing fishing capacity (3).
- Ensure indigenous or native communities have access to fishing privileges (4).
- Ensure communities maintain historic connections to fisheries (3).
- Ensure specific geographic areas have access to fishing privileges (4).

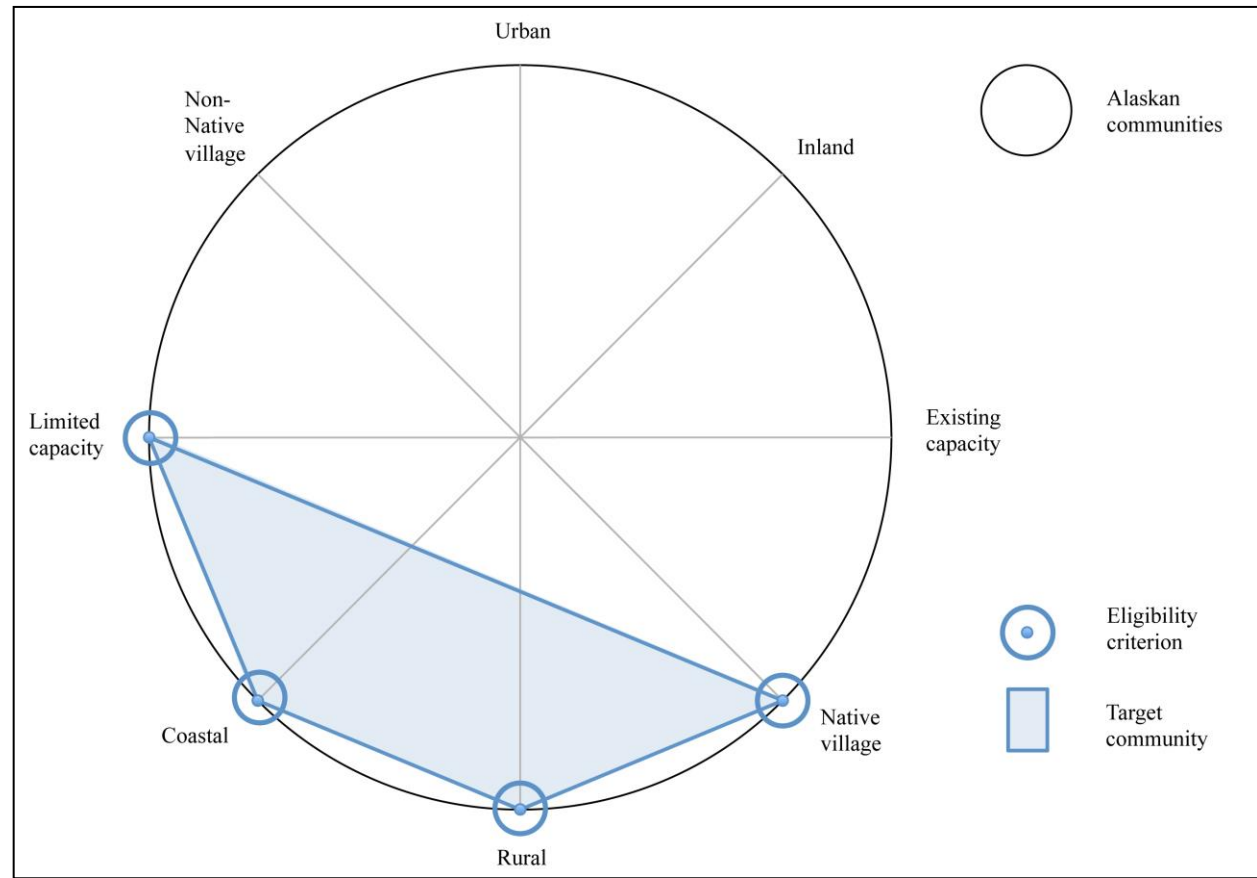
Many, if not all, of these themes could be included as eligibility criteria to anchor limited access privileges with FC and RFA entities. Two important factors that need to be considered in setting these criteria are discussed below.

### 1. Goals and objectives

Councils are responsible for specifying criteria that are regionally relevant, meet the requirements of MSA, and support the objectives of the relevant FMP. In looking across the case studies, the programs are intended to serve a range of purposes. Some support rural and small-scale fishing interests or indigenous communities, while others benefit large-scale operators. The criteria for FC and RFA entities should align with the objectives of the FMP and be consistent with the intended uses discussed in the introduction of this document. While the focus of these programs will likely be on achieving socioeconomic benefits, these entities can also be designed to achieve conservation objectives. For example, community sustainability and regional fishery association plans could also be used as a vehicle to increase bycatch management, improve gear performance, or reduce variability in annual yield if performance goals and objectives are designed in a way to incentivize their achievement.

Figure 2 provides a way to visualize the eligibility criteria in the Western Alaska CDQ program. The purposes of the CDQ program are “(i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area; (ii) to support economic development in western Alaska; (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and (iv) to achieve sustainable and diversified local economies in western Alaska” (Balsiger 2010). Each line that bisects the circle represents a continuum along a given criterion (e.g., rural to urban). Cumulatively, these lines form the boundaries by which fishing communities in western Alaska are evaluated. In this instance, the shaded area represents the collective characteristics of qualified communities. These characteristics align with the goal of ensuring small, rural communities in western Alaska maintain access to limited access privileges provided by the CDQ program.

**Figure 2. Example eligibility criteria**



## 2. Subjectivity

The subjectivity of each of the eligibility criterion, outlined above, varies between and within these programs. The contrast between the criteria in the Maine Groundfish Permit Bank program and the Western Pacific Community Development Program illustrates this spectrum. In the permit bank program, for example, one of the requirements is that participants cannot have violated any fishing regulation (Table 1, Section 3). This criterion is non-subjective, making it relatively simple to evaluate. In contrast, one of the requirements of the Western Pacific Community Development Program is that participants must “have knowledge of customary practices relevant to fisheries in the western Pacific” (Table 1, Section 5). Without further explanation, criteria like this are subject to interpretation. Section 303A of the MSA does not offer guidance or set parameters on the level of subjectivity of the eligibility requirements for FC or RFA entities. Therefore, Councils can choose a set of criteria anywhere along the spectrum. The primary trade-off between objectivity and subjectivity is time and flexibility. Subjective criteria may also be difficult to monitor and enforce. However, the more objective a criterion or set of criteria, the less leeway a Council can adopt in determining who is eligible to participate in or form an FC or RFA entity. Therefore, Councils may elect to include subjective criteria or a mix of objective and subjective criteria to satisfy the need for flexibility. This may add layers of complexity to the review and evaluation process and should be considered in the implementing regulations. If, as in the case of the Western Pacific Community Development Program, a

Council includes one or more subjective criteria, NMFS will need to develop a process to decide whether prospective fishing communities meet these requirements. If a Council wants to be involved in the selection process, the Council could form a committee to review applications from prospective FC and RFA entities and then, in turn, make recommendations to the agency.

## SECTION 2

### *Creating Community Sustainability and Regional Fishery Association Plans*

FC and RFA entities must have a “community sustainability plan” or “regional fishery association plan,” respectively (Appendix I, Lines 11-17, 54-57). These plans should be comprehensive, yet Councils should also strive to make their requirements straightforward so they are not overly cumbersome to prepare or evaluate. In general, community sustainability and regional fishery association plans serve two primary functions: (1) to hold FC and RFA entities accountable and (2) to foster an atmosphere of careful planning and coordination on the part of these entities. Implicit in this observation is that these plans serve managers and resource users alike. They provide a framework by which Councils and NMFS can manage FC and RFA entities and evaluate the alignment between these entities and the environmental, social, and economic goals of the FMP over time. They also serve as a planning document for individual FC and RFA entities to guide or augment their operations. Although these purposes are not inherently antithetical, they are different. To ensure that these plans are constructed in a way that serves both functions, they should be straightforward and practical, making it clear how the document promulgates accountability, facilitates evaluation, and fosters operational longevity.

In designing these plans, Councils need to take into account Sections 303A(c)(3)(ii) and 303A(c)(4)(B). These provisions mandate that the Secretary of Commerce revoke fishing privileges from FC and RFA entities that do not comply with the requirements of its plan. These clauses have been a concern for many prospective FC and RFA entities because any breach of the plan could potentially result in the loss of limited access privileges. Recognizing this issue, one way to avoid problems of non-compliance with *de minimus* elements of a community sustainability or regional fishery association plan (e.g., failure to submit something on a specified data or to sign a document) is to specify the requirements that would trigger Secretarial action (Mariam McCall 2013, per. comm.) Other elements of the community sustainability or regional fishery association plan would not be considered ‘requirements’ of the plan and could trigger different or less drastic penalties. For example, the FC or RFA plan could be written such that the FC or RFA entity explains what it will do to check for signatures, dates and other administrative-related issues within its plan. These could include requirements that support either accountability or planning functions. Those actions that are deemed less substantive could trigger different or less drastic penalties than loss of privileges. Plans could require the FC or RFA entity to take a specific corrective action as is required in NE Sector operations plans.

The following section outlines and then discusses elements of existing management programs (including for non-LAPP fisheries) as a way to identify potentially useful community sustainability and regional fishery association plan requirements. Of the case studies introduced in the previous section, four of the programs require a written plan or the equivalent. In general, these plans include a combination of administrative and operating details and statements about



purpose and scope. Many of these requirements could be incorporated into community sustainability or regional fishery association plans for FC and RFA entities, respectively, supporting the functions of accountability and planning outlined above. Table 2 specifies the reporting requirements for the Gulf of Alaska Groundfish Quota Entity program, Gulf of Alaska Groundfish CDQ program, Western Pacific Community Development program, and New England Multispecies sector program.

**Table 2. Examples of Requirements in Existing Planning and Reporting Documents**

<b>General Category</b>	<b>Gulf of Alaska CQE annual reports</b>	<b>Western Pacific Community Development Program proposals</b>	<b>Western Alaska Groundfish CDQ program reports</b>	<b>Northeast Multispecies sector operation plans</b>
<b>Enforcement</b>				Must provide a plan that describes the disciplinary procedures for sector members who do not abide by the sector rules
				Must include an explanation of how the sector will immediately notify NMFS if a member is expelled
				Must include detailed information about overage penalties or other actions to be taken if the sector exceeds its ACE
<b>Data confidentiality</b>				Must provide a statement allowing for the release to the sector of otherwise confidential data collected about participating members' vessels (i.e., catch) under the provisions of the MSA
<b>Goals/Purpose</b>		Must provide a description and justification for the specific fishing activity being proposed	Must provide a written statement to the Secretary of Commerce and State of Alaska summarizing fisheries-related investments	
		Must include a statement of the purposes and goals of the plan	Must provide a written statement to the Secretary of Commerce and State of Alaska summarizing non-fisheries investments	

<b>General Category</b>	<b>Gulf of Alaska CQE annual reports</b>	<b>Western Pacific Community Development Program proposals</b>	<b>Western Alaska Groundfish CDQ program reports</b>	<b>Northeast Multispecies sector operation plans</b>
<b>Allocation</b>	Must have a detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents	Must include a description of how the community and/or its members meet each of the eligibility criteria		Must include text regarding the quantity and duration of any redistribution of ACE within the sector
	Must have a description of the process used to solicit lease applications from residents of the eligible community on whose behalf the CQE is holding quota share	Must have a statement describing the degree of involvement by the indigenous community members including the name, address, telephone number, and other contact information of each individual who would conduct the requested fishing activity		
	Must provide a description of efforts made to employ crew members who are residents of the eligible community			
<b>Legal</b>	Must have bylaws of the CQE, board of directors, or other key management personnel			Must include detailed information about individual administrative provisions that would not be subject to enforcement by NMFS
	Must have copies of minutes and other relevant decision-making documents from CQE board meetings			Must include a statement that the sector is a legal entity (specify type, e.g., corporation) and is therefore subject to NMFS enforcement action for violation of sector regulations
				Must include a statement that sector members may be held jointly and severally liable for violations of quota overages, discarding of legal-sized fish, or misreporting of catch

<b>General Category</b>	<b>Gulf of Alaska CQE annual reports</b>	<b>Western Pacific Community Development Program proposals</b>	<b>Western Alaska Groundfish CDQ program reports</b>	<b>Northeast Multispecies sector operation plans</b>
<b>Eligibility and accounting</b>	Must identify the eligible community, or communities, represented by the CQE	Must include vessel names and official number (i.e., USCG documentation, state, territory, or other registration number)		Must specify the length of member commitment and the voluntary nature of membership as well as the rules for joining or quitting the sector
	Must have the name, vessel registration number, U.S. Coast Guard documentation number, length overall, and home port of each vessel from which the IFQ leased from the CQE was fished	Must include name, address, and telephone number of the owner(s) and operator(s)		Must provide a preliminary list of members as well as a list of enrolled permits (e.g., all permits a member owns)
	Must have names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ			Must include the name of a designated representative or agent of the sector
	Must have the names and resident city and state of those individuals employed as crew members when fishing the IFQ derived from the quota share held by the CQE			Must account for the original distribution of the sector's quota (ACE) among member permits and/or vessels
	Must have names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE			Must have a detailed plan for the initial allocation of ACE among members that explains any consolidation and any redirection of effort that will result from sector operations
				Must provide a plan and analysis to show how the sector will avoid exceeding its allocated ACEs

<b>General Category</b>	<b>Gulf of Alaska CQE annual reports</b>	<b>Western Pacific Community Development Program proposals</b>	<b>Western Alaska Groundfish CDQ program reports</b>	<b>Northeast Multispecies sector operation plans</b>
<b>Eligibility and accounting (continued)</b>				Must include a statement explaining that a specific tracking application should be used to report all data quality issues to the appropriate personnel for research and correction activities
				Must include a statement explaining that the sector manager will submit a weekly, or daily, report to NMFS
				Must include ACE thresholds that may trigger revisions to reporting frequency
				Must include details (including method and timing) of the sector's plan for notifying NMFS once the specified ACE threshold has been reached

General Category	Gulf of Alaska CQE annual reports	Western Pacific Community Development Program proposals	Western Alaska Groundfish CDQ program reports	Northeast Multispecies sector operation plans
<b>Operations</b>	Must provide the total amount of halibut quota share and sablefish held by the CQE at the start of the calendar year and at the end of the calendar year	Must provide net tonnage		Must provide location of the fishing activity
		Must provide frequency and duration of the fishing activity		
		Must provide location of the fishing activity		Must include a description of how groundfish will be avoided while participating in other fisheries that have a bycatch of groundfish, if the sector does not have ACE for the stocks caught
		Must provide species to be harvested, and any potential bycatch		Must provide gear type(s) to be used
		Must provide the vessel displacement and fish holding capacity of participating vessels		Must propose limitations to eliminate adverse effects of any redirection of effort
		Must provide gear type(s) to be used		Must include harvest rules detailing sector operations and any additional exemptions requested by the sector beyond the universal exemptions approved in Amendment 16
				Must include information about the monitoring information needed

## *Considering key decision points*

Table 2 above provides a list of the 38 requirements contained in the Western Pacific Community Development Program proposal, Northeast Multispecies Sector Operations Plan, Gulf of Alaska Groundfish CQE annual report and Western Alaska Groundfish CDQ reports. The table reveals a range of similarities and differences across programs. Of these requirements, a number stand out as being relevant to community sustainability or regional fishery association plans. These include:

- An objective(s) statement that supports the goals of fishery management.
- Information about participants (e.g., vessel and permit information, gear used).<sup>6</sup>
- A description of how the entity supports social, economic, and environmental goals of the broader community.
- A description of the roles and responsibilities of participants.
- A quota management strategy.
- An audit schedule and evaluation method.
- Disciplinary procedure(s).

The appropriate combination of sustainability plan requirements is apt to vary between regions and fisheries. Four factors that may facilitate the development and selection of these requirements are discussed below.

### 1. Structure

Section 303A(c)(3) and (4) do not define how the requirements of community sustainability and regional fishery association plans are written or structured. Therefore, a Council can express these requirements however it deems most appropriate (e.g., open-ended, multiple choice, etc.). Each requirement should be explicitly tied to one or both of the aforementioned functions (i.e., accountability and planning). Being direct about the purpose of a given requirement will ensure it is not superfluous or redundant. Defining the relationship between a given requirement and the functions will also help determine how it should be written. Amendments 84 (NMFS 2005) and 91 (NMFS 2004) to the Bering Sea and Aleutian Islands FMP provide examples of contrasting approaches. Both facilitate the use of cooperative agreements in salmon bycatch management, but Amendment 84 sets out very prescriptive conditions, while Amendment 91 is more open-ended. In instances where Councils want FC and RFA entities to take specific actions (e.g., reporting violations, monitoring harvest levels, etc.), they can provide specific language for the community sustainability or regional fishery association plan. In New England, for example, the Northeast Regional Office has assisted sectors operating in the Northeast Multispecies limited access fishery by providing specific language that each sector should include in the document. For example, each sector must address the reporting requirement by using the following language:

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<sup>6</sup> This information must be consistent with confidentiality requirements.

*The reporting due date for the sector manager's weekly report will be increased to daily when either 90% of any of the sector's ACEs [i.e. quota] is reached. An alternative threshold for increasing reporting frequency may be implemented during FY 2013 if agreed upon by the sector and NMFS.*

This approach ensures, unequivocally, that FC and RFA entities include the information deemed essential by the management authorities in their community sustainability and regional fishery association plans. Providing such templates or standards where necessary also simplifies the process for setting up FC and RFA entities, making them more straightforward and manageable/quicker to develop.

## 2. Use of Existing Information

Establishing ways to standardize community sustainability and regional fishery association plans is not a prerequisite, but consistency will help simplify the development and review process. One way to standardize the process is to include documents – such as bylaws and articles of incorporation – that already have standard structural requirements and contain pertinent information that can be used to evaluate the extent to which an entity is capable of “address[ing] the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery” (MSA Section 303A(c)(3)(A)(i)(IV); Appendix I, Lines 11-17). Examples include bylaws, articles of incorporation, or business plans. In this way, it may be helpful to think about these plans as assemblages of documents, new and existing, that make up a single coherent package.

## 3. Benefit(s)

Community sustainability and regional fishery association plans will likely include a combination of standardized requirements, as well as some that are more loosely defined. As already noted, requirements relating to allocation, disciplinary processes, and reporting of catch are conducive to being rigidly defined. But those that are intended to determine whether an entity has done the necessary amount of planning, or evaluate whether the entity will benefit the broader fishing community are more difficult to define narrowly and in fact may benefit by being defined more freely. Many communities have given thought to how they could operate and how they support broader objectives. These groups have identified a range of ways that they can support and evaluate ecological, social, and economic objectives that “address the social and economic development needs of coastal communities” (MSA Section 303A(c)(3)(A)(i)(IV); Appendix I, Lines 11-12). Structuring these requirements loosely gives fishing communities the leeway to articulate these objectives and describe how they will address them locally.

## 4. Review and Modifications

These plans also provide an opportunity to foster adaptive management. As FC and RFA entities evaluate their performance relative to their stated goals and objectives, they should be able to modify their sustainability plans to make their operations more efficient and effective at achieving their desired goals. To this point, Councils may consider requiring FC and RFA entities to review and make changes, if needed, to their sustainability plans at regularly defined



intervals. Identifying performance metrics up front will be critical to these reviews. Changes to the sustainability plans could be voluntary, or NMFS and/or Councils could periodically audit the entities and these audits could trigger changes. A possible model would be the requirement under the MSA for periodic review of all LAPP programs in Section 303A(a)(1)(G): “regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years).”

Regardless of the final frequency chosen for establishing and auditing performance metrics (including who is responsible for paying for such processes), it is but one of the roles and responsibilities that the management authority and the fishing entity will need to work out for each Council program. Building off these considerations, a list of the potential contents for community sustainability and regional fishery association plans is included in Tables 3 and 4.

**Table 3. Sample Community Sustainability Plan Table of Contents Checklist**

<i>Possible Requirements of a Community Sustainability Plan</i>	<i>Primary objective served</i>		<i>Supplemental material</i>
	<i>Accountability</i>	<i>Planning</i>	
Membership	✓		NA
Objectives statement that is consistent with the Council's FMP, supports MSA (especially National Standard 8)		✓	NA
Information about participants, entity (e.g., cooperative, non-profit), and fishing operations	✓	✓	Articles of incorporation
Roles and responsibilities of all participants (including named liaison to Council and NMFS)	✓	✓	Articles of incorporation; Bylaws
Explanation of how the entity will benefit the greater community and fit into other types of community development, such as tourism and/or seafood processing		✓	NA
Evidence of community support from harvesters, processors, and other relevant stakeholders	✓		Letters of recommendation
Limited access privilege management and reporting strategy	✓	✓	Business plan
System to sustain participation, attract new entry, and facilitate generational transition and intergenerational transfer of privileges where allowed by the Council	✓	✓	Business plan
Short-term and medium-term development/business strategy		✓	Business plan
Metric and system to evaluate both biological/harvest and social/economic achievements <sup>7</sup>	✓		NA
Regularly scheduled audit to ensure that entity is making progress toward the mission, goals, and objectives	✓		NA
Standardized system to address violations of the community sustainability plan	✓	✓	NA
Review process	✓	✓	NA
Signature stating FC agrees to follow the sustainability plan	✓		NA

<sup>7</sup> The data requirements should be defined at the same time the FMP/Amendment is being developed.

**Table 4. Sample Regional Fishery Association Plan Table of Contents Checklist**

<i>Possible Requirements of a Regional Fishery Association Plan</i>	<i>Primary objective served</i>		<i>Supplemental material</i>
	<i>Accountability</i>	<i>Planning</i>	
Membership	✓		NA
Objectives statement that is consistent with the Council's FMP, and supports MSA		✓	NA
Information about participants, entity (e.g., cooperative, non-profit), and fishing operations	✓	✓	Articles of incorporation
Roles and responsibilities of all participants (including named liaison to Council and NMFS)	✓	✓	Articles of incorporation; Bylaws
Limited access privilege management and reporting strategy	✓	✓	Business plan
Short-term and medium-term business strategy		✓	Business plan
Metric and system to evaluate both biological/harvest and any social/economic achievements <sup>8</sup>	✓		NA
Regularly scheduled audit to ensure that entity is making progress toward the mission, goals, and objectives; and to ensure financial transparency and fiduciary responsibility	✓		NA
Standardized system to address violations of the regional fishery association plan	✓	✓	NA
Review process	✓	✓	NA
Signatures stating RFA members agree to follow the regional fishery association plan	✓		NA

<sup>8</sup> The data requirements should be defined at the same time the FMP/Amendment is being developed.

## SECTION 3

### *Establishing a process and timeline*

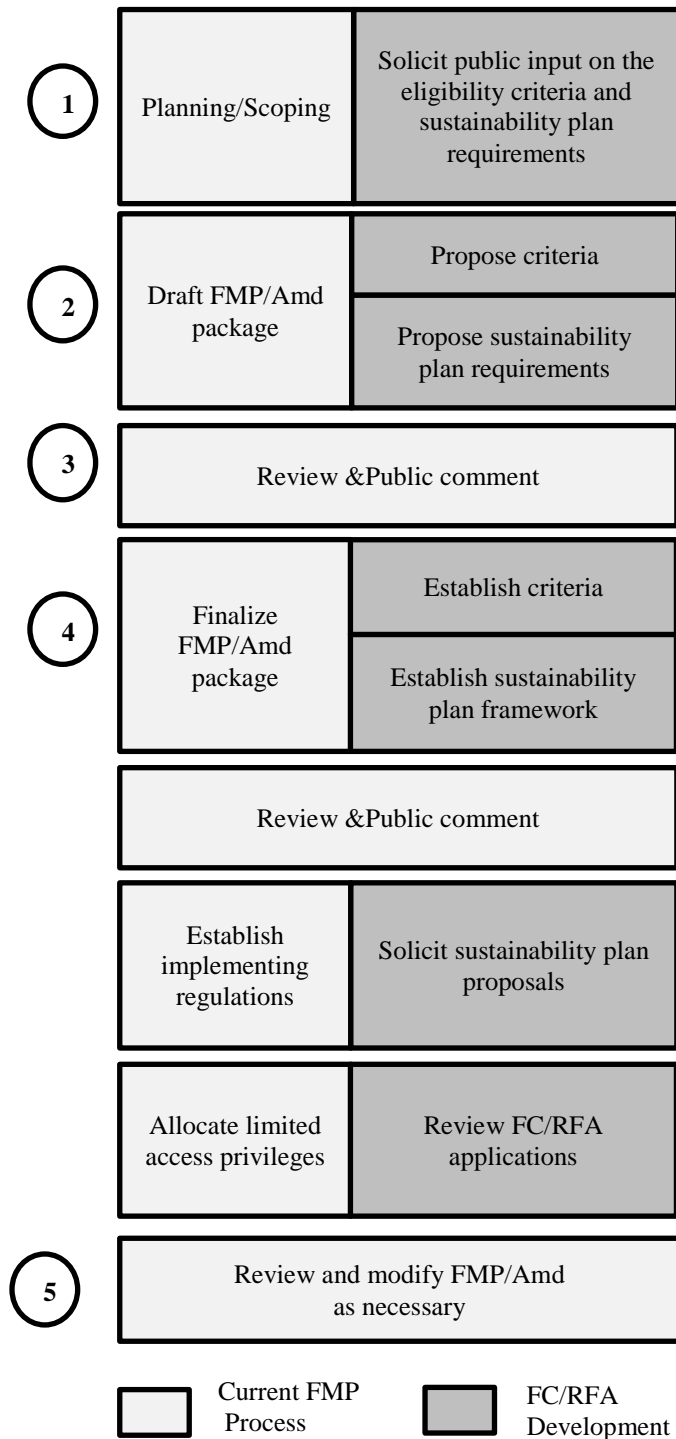
All conservation and management measures are driven by internal and legislatively mandated timelines. The timeline for establishing and subsequently allocating limited access privileges to FC or RFA entities is no different.

The current FMP/amendment process has five phases (1) planning, (2) preparation of draft documents, (3) public review and Council adoption, (4) final FMP/amendment review and approval, and (5) continuing and contingency fishery management.

Within this framework, FC and RFA development is a stepwise or concurrent process in which: (1) a Council works closely with NMFS and stakeholders to develop an action that includes eligibility criteria, community sustainability and regional fishery association plan requirements, and an evaluation process for FC and RFA entities; and (2) implementing regulation(s) are developed by Councils and NMFS to enable fishing communities to gain access to limited access privileges through the formation of FC or RFA entities (Figure 2.)

Building off the current Council practices, this section describes a hypothetical FC/RFA timeline consistent with the legislative mandates associated with most conservation and management measures that require an amendment to an existing FMP. In this document, particular emphasis is placed on the initial two stages of this timeline (#1 and #2 in Figure 2). These stages are

**Figure 2. Linkage between FMP process and FC/RFA development**



particularly important because measures taken up front will largely govern if, when, and how FC and RFA entities are implemented in the regulations that follow.

### *Considering key decision points*

Numerous decision points are associated with every federal fisheries management action. Decisions that set or alter the allocation of fishing privileges tend to be particularly challenging and controversial. The basic decision points in designing catch shares,<sup>9</sup> including but not limited to LAPPs, center on three main questions: (1) is allocation of fishing privileges appropriate for the fishery; (2) what is the right control date and timeframes for calculating individual entities'<sup>10</sup> privileges, or if privileges are not allocated on the basis of prior catch history, how will privileges be allocated; and (3) what type or types of allocation are most suitable for the fishery (e.g., person, community, etc.)? The latter question is an important design element of any limited access fishery, but it is often assumed without formal consideration or assessment by Councils that privileges will be allocated to individual entities.

Fishing community allocations (e.g., FC, RFA, Community Fishing Association, etc.) represent an alternative to individual allocations. These allocations may not be appropriate for all LAPP fisheries, but in instances where small-scale and rural fishing communities exist and/or quota consolidation is a real or perceived concern, they represent a reasonable option for Councils to analyze. Community-based allocations may also provide social benefits, reduce management burden (e.g., 10 RFA entities vs. 450 individuals), or align with the existing organization of a fishery. Fishing community allocations can be used in tandem with individual allocations (e.g., as a set-aside<sup>11</sup>), or they can be used as the sole means by which limited access privileges are allocated in a fishery.

In instances where a Council elects to develop FC and RFA entities to hold limited access privileges, the Council is required to develop eligibility criteria and establish the requirements for sustainability plans during the FMP or amendment process. In developing these eligibility criteria, MSA requires Councils to consider six parameters (MSA Section 303A(3)(B) and (4)(C); Appendix A, Line 17-32, 57-72). In addition, a Council must submit draft eligibility criteria and community sustainability and regional fishery association plan requirements to the Secretary of Commerce for review and approval. Eligibility criteria and community sustainability and regional fishery association plans are discussed in more detail in the subsequent section. Implicit in these requirements is a sequence of key steps where specific actions can be taken to facilitate the development and implementation of FC and RFA entities. For practical purposes it may be helpful to think about these actions within the context of a

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<sup>9</sup> “Catch share” is a general term for several fishery management strategies that allocate a specific portion of the total allowable fishery catch to individuals, cooperatives, communities, or other entities. Each recipient of a catch share is directly accountable to stop fishing when its exclusive allocation is reached. The term includes specific programs defined in law such as “limited access privileges” (LAP) and “individual fishing quota” (IFQ), and other exclusive allocative measures such as Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically designated fishing ground.” From NOAA’s Catch Share Policy, online at: [http://www.nmfs.noaa.gov/sfa/domes\\_fish/catchshare/docs/noaa\\_cs\\_policy.pdf/](http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/noaa_cs_policy.pdf/).

<sup>10</sup> This includes those defined in Section 303A(1)(D).

<sup>11</sup> A set-aside is an arrangement in which a portion of the total harvestable quota is withheld from the fishing fleet or used for a specific purpose such as research.

hypothetical fishery FMP or amendment (FMP/Amd) timeline and any associated NEPA process.<sup>12</sup> The timeline below outlines the main steps associated with establishing an FMP/Amd, highlighting the initial steps in the process that will drive the remainder of the action (Figure 3).<sup>13</sup>

Embedded in the timeline are key decision points related to FC and RFA entity development. This list is not necessarily exhaustive, but it represents a series of important considerations. Not addressing FC and RFA entities at these steps may slow or prevent them from being implemented without revisions to the FMP/Amd package. While the timeline below does not include the steps involved in developing the implementing regulations, the FMP/Amd development and implementation process could be streamlined if FC and RFA proposals are developed by prospective fishing communities and regional fishing associations at the same time that the FMP/Amd package is being prepared. This precedent was set in the non-LAPP New England Multispecies Groundfish Sector Program. Sectors developed and submitted operations plans concurrent with development of Amendment 16 requirements for sectors so that the sectors could operate the first day the new sector rules were effective. This avoided a 1-year delay between creating sector rules and getting vessels fishing under these rules.

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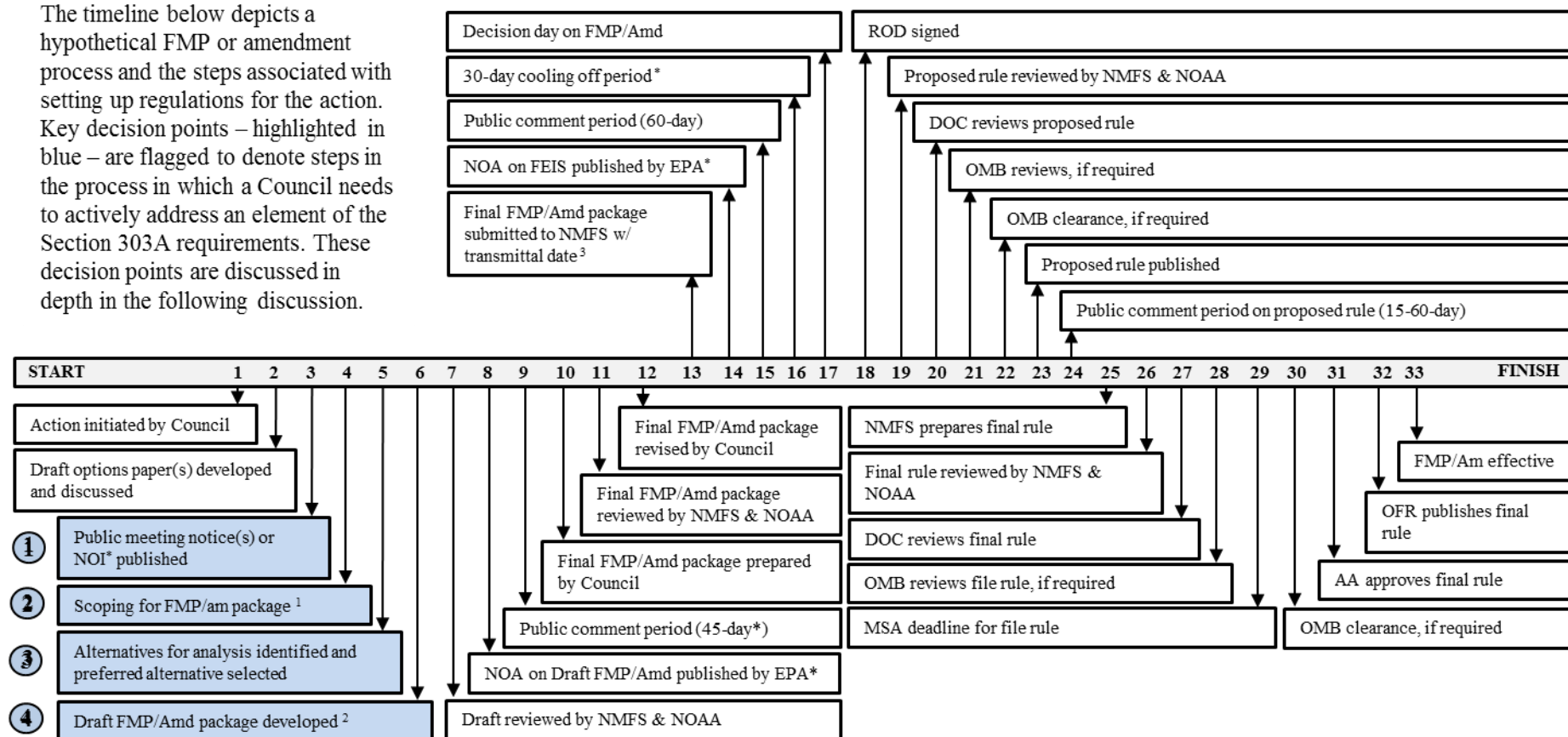
<sup>12</sup> The Pacific Fishery Management Council considered a number of trailing actions for the Amendment 20 and Amendment 21 trawl rationalization program. As part of these trailing actions, the Council drafted an Environmental Assessment for Control Limit Safe Harbors for CFAs and risk pools (PFMC 2011).

<sup>13</sup> The timeline presented below builds off NMFS' guidelines on FMP/Amd development (NMFS 1997), information presented at past new Council member orientations (e.g., Oliver, 2012), and input from NOAA General Counsel, NMFS' NEPA Office, and staff in both NMFS' Regional Offices and Headquarters.

**Figure 3. Key decision points in the FMP or amendment process to consider in establishing a mechanism to set up and allocate limited access privileges to FC or RFA entities**

The timeline below depicts a hypothetical FMP or amendment process and the steps associated with setting up regulations for the action. Key decision points – highlighted in blue – are flagged to denote steps in the process in which a Council needs to actively address an element of the Section 303A requirements. These decision points are discussed in depth in the following discussion.

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<sup>1</sup> This includes scoping for:

NEPA – Scoping for DEIS or FONSI  
Reg. Flexibility Act – Scoping for IRFA  
MSA – Scoping for FIS/SIA  
EO 12866 – Scoping for RIR  
EO 12898 – Scoping for “significance” determination by OMB  
PRA – Estimate of burden hours

<sup>2</sup> This includes:

NEPA – Prepare DEIS, if necessary  
Reg. Flexibility Act – Prepare IRFA document, if necessary  
EO 12866 – Prepare RIR document  
EO 12898 – Include as part of DEIS  
MSA – Prepare FIS/SIA  
PRA – Prepare 83-I

\* If an EIS is required

<sup>3</sup> This initiates the MSA Secretarial Review

Key decision point

**Note: Actual FMP/Amd timelines vary regionally.**

The initial steps in the FMP/Amd development process are critical to allocating limited access privileges to FC entities and making it possible for RFA entities to acquire them after the initial allocation period. In this section, four key decision points are described. For each decision point, the action is presented and then explained in more detail.<sup>14</sup>

### **① Public Meeting notice and/or Notice of Intent and the initiation of scoping**

*Action* – Use the initiation of scoping to describe the scope of the environmental, social, and economic issues to be considered in the FMP/Amd, soliciting additional information and alternatives from stakeholders to inform the eligibility criteria and community sustainability and/or regional fishery association plan requirements. If an EIS is required, this solicitation should be incorporated into the Notice of Intent (NOI).  
– Use the initiation of scoping to solicit input on how to evaluate FC and RFA entities.

*Explanation* – Scoping begins with the publication of public meeting notices and an NOI to prepare a Draft Environmental Impact Statement (DEIS) or, alternatively, a Draft Environmental Assessment can be prepared to determine whether an EIS is required. Scoping should inform interested stakeholders of the proposed action and alternatives and serve as a way to solicit meaningful public input, including additional information and alternatives. Written comments solicited upon publication of these notices must be considered in the identification of alternatives for the FMP/Amd package. In practice, the content and specificity of these announcements vary considerably from region to region and action to action, depending on the nature of the proposed analysis. FMP/Amd actions that focus on or involve FC or RFA entities should explicitly seek public input on the six participation criteria specified in Sections 303A(c)(3) and (4) (Appendix A, Line 17-32, 57-72). NMFS may solicit this information in several ways. Information may be requested from the public about one or more of the criteria, or a strawman document may be drafted for stakeholders to review. Either way, possible information to evaluate includes:

- *The traditional fishing or processing practices in, and dependence on, the fishery* – How, when, and where fishing and processing has or does occur in the region. Length of time that these activities have occurred. Extent the fishery has changed over time. Timeframe that the change has occurred. Factors that have led to these changes. Extent to which more or less access to the fishery could affect the marine-dependent businesses and the broader community. Fisheries that have been or are currently targeted. Share of fishing and processing in the region that will be affected by the proposed changes. Extent to which these changes affect the other fisheries in the region.
- *The cultural and social framework relevant to the fishery* – How the fishery is primarily used (e.g., for food, recreation, sale, trade). The user groups in the region that use the fishery and the ways the fishery is allocated among these competing uses. The particular group or geographic region that uses the fishery. The extent that the fishery embedded in the region's sense of place and identity. Spiritual or cultural practices associated with the fishery.

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<sup>14</sup> Coincident with, or following, the development and approval of the FMP/Amd, implementing regulations are developed. These regulations specify the process for determining and applying for allocation of catch among components of the fishery, including the division of the catch between FC and individual limited access privileges holders according to the specifications set out in the FMP or amendment.



- *Economic barriers to access to the fishery* – The costs to enter the fishery. The market for the fishery. The equipment or permits necessary to enter the fishery. Operational costs for the vessels and businesses. The size of businesses that operate in the fishery. Number of employee/crew in these businesses. The extent to which loan programs are available to extend credit to industry participants. The availability of credit/collateral and requirements for obtaining it.
- *The existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion* – Impact of past management decisions on fishery-related commerce in the region. Relative to past changes, potential impact of proposed action on commerce. The effect on demographics. The effect on the number of jobs. The effect on the quality of those jobs that remain. The effect on individual entities' ability to enter the fishery.
- *The expected effectiveness, operational transparency, and equitability of the sustainability plan* – Extent to which the region has implemented other cooperative arrangements. Extent to which these arrangements have been successful or unsuccessful. Rules or requirements that should be incorporated into the plan to make it appropriate, equitable, and effective. The procedures for handling internal allocation of fishing privileges. The ways that the entity will deal with non-compliance issues. Evaluation of who should be involved in drafting requirements for them to be accepted and followed. List of data to assess the effectiveness of the program (and if new data collections are necessary, how easy these data are to collect). The process (e.g., large public meetings, a series of smaller workshops, surveys, focus groups, etc.) that should be used.

For Fishing Community entities only:

- *The potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery* – Extent to which FC entities would benefit or impact such a place. Ways to help individuals gain access to the fishery. Metrics that should be used to measure and assess the effectiveness of these entities.

For Regional Fishery Association entities only:

- *The administrative and fiduciary soundness of the association* – The procedures for allowing new quota holders to join or existing members to leave the RFA entity. Processes for collection of dues or description of funding mechanisms for the lease/purchase of quota.

Public meeting notices and NOIs should also solicit input from stakeholders on community sustainability and regional fishery association plans. In particular, they should seek specific input from stakeholders on the appropriate requirements for these plans and on the criteria that should be used to evaluate “how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources [e.g., new entrants] to participate in the fishery” (MSA Section 303A(3)(A)(i)(IV); Appendix I, Line

12-15). How success will be defined and what data are needed to assess the success of FC and RFA entities needs to be defined early in the process. As with the participation criteria, Councils and NMFS may either provide a list of potential requirements or allow the public to brainstorm ideas without being influenced by a strawman document.

## ② Scoping

*Action* – Gather information to adequately consider the six participation criteria contained in Section 303A (MSA Section 303A(3)(B) and (4)(C); Appendix A, Line 19-34, 59-74).  
– Scope draft eligibility criteria and community sustainability and regional fishery association plan requirements (MSA Section 303A(3)(A)(i)(IV) and (4)(A)(iv); Appendix A, Line 6-7, 11-17, 42-42, 54-57).

*Explanation* – Scoping is a part of the FMP process that allows the Council and NMFS to involve the public. It provides an opportunity to gather information about current and traditional fishing practices, social and cultural frameworks, and the economic potential of a given management action. This information is used to develop Social Impact Assessments (SIA), among other documents, which in turn provide part of the basis for writing fishery impact statements, required by MSA 303(a)(9) for any FMP/Amd. Fishery impact statements are rarely, if ever, standalone documents. Instead, they are incorporated into an FMP/Amd package that includes analyses for Regulatory Flexibility Act, E.O. 12866 on benefit-cost analysis; the Paperwork Reduction Act (PRA), the National Environmental Policy Act (NEPA), and other relevant law. The data needs for these analyses overlap considerably with the data needs for identifying regionally applicable eligibility criteria and defining draft community sustainability and regional fishery association plan requirements for FC and RFA entities. Appendix B illustrates the potential overlap between the six participation criteria for FC and RFA entities (MSA Section 303A(3)(B) and (4)(C); Appendix A, Line 19-34, 59-74) and those associated with SIAs, the Regulatory Flexibility Act, and Executive Orders 12866.

Performing these assessments will help Councils consider the six participation criteria. However, while these assessments provide useful information, they do not instruct Councils on how to use the socioeconomic data to develop draft eligibility criteria. Such guidance is also absent in Section 303A. Therefore, Councils could turn to other parts of the MSA to justify the basis for the draft eligibility criteria that are selected. National Standard 8 may prove particularly useful. This standard focuses on the social and economic well-being of coastal communities, stating that management measures should “... (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities” (Section 301(a)(8)). National Standards 1, 4, and 5 may also be useful. National Standard 1 deals with preventing overfishing, while achieving optimum yield (Section 303(a)(1)).<sup>15</sup> National Standard 4 deals with fair and equitable allocation (Section 303(a)(4)). National Standard 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources except that no such measure shall have economic allocation as its sole purpose (Section 303(a)(5)). Combined, these

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<sup>15</sup> See Olson et al.’s (2013) discussion of National Standard 1 and optimum yield in relationship to seafood and food supply.

standards provide useful direction: eligibility criteria, to some extent, should help sustain participation and achieve optimum yield while preventing overfishing.

### ③ Identify alternatives

*Action* – Identify how limited access privileges will be allocated (e.g., via FC or RFA entities).

- Identify how limited access privileges can be transferred among entities (e.g., whether they can be traded across sectors and among and between FC and RFA entities).
- Identify appropriate accumulation limits for FC/RFA entities and allocation across sectors of the fishery (e.g., between FC/RFA and individuals).

*Explanation* – When drafting the FMP/Amd package, a Council will consider the range of alternative management actions. The Council’s “preferred” alternative is the alternative that the Council believes would best fulfill its objectives and responsibilities, giving consideration to social, economic, environmental, biological, technical, and other factors. This suite of alternatives is generally included in the FMP/Amd package or within a DEIS, if one is deemed necessary.

The preferred alternative should describe the process by which limited access privileges will be allocated to FC and acquired by RFA entities. This includes the eligibility criteria and the community sustainability and regional fishery association plan requirements.

Councils should also address accumulation limits as they relate to FC and RFA entities. To set accumulation limits, Councils need to make many decisions about how privileges can or cannot be traded and to whom. These choices can have major impacts on the economic efficiency of the program as well as distributional impacts that affect how fishing privileges move among fishermen within and across communities. More information about the complexity of setting accumulation limits can be found in *The Design and Use of Limited Access Privilege Programs* (Anderson and Holliday 2007).

In existing catch share programs, accumulation limits vary considerably.<sup>16</sup> Limits may be put in place to increase economic efficiency or to prevent individuals or entities from holding an excessive share of quota, as required by National Standard 4 and Section 303(A)(5). Setting accumulation limits for FC and RFA entities is necessary for the same reason. However, there may be additional reasons or considerations in establishing accumulation limits, such as balancing portfolios of multiple stocks caught together or maintaining community access to fisheries. Therefore, FC and RFA accumulation limits should be evaluated separately from those assessed to individual permit holders. In some instances, it may be appropriate to set different accumulation limits for FC, RFA, and individual privilege holders. This should be done cautiously so as to prevent loopholes that let individual entities get around the accumulation limits, but encourage FCs and RFAs to accumulate shares that deliver the social and economic benefits that contribute to community sustainability.

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<sup>16</sup> Also see Walden (2011) for clarification on the concept of excessive shares.

#### ④ Draft Fisheries Management Plan or Amendment

*Actions* – Propose draft eligibility criteria (MSA Section 303A(3)(A)(i) and (4)(A); Appendix A, Line 6-7, 42-43)

- Propose community sustainability and regional fishery association plan requirements (MSA Section 303A(3)(i)(IV) and (4)(A)(iv); Appendix A, Line 11-17, 54-57)
- Propose accumulation limits for FC/RFA entities and define allocation across sectors of the fishery (e.g., between FC entities and individual entities).
- Propose evaluation and data collection needs.

*Explanation* – The scoping process provides the baseline information needed to develop the draft FMP/Amd package. Collectively, the FMP/Amd package describes the proposed program and evaluates the environmental, biological, economic, and social effects, as well as costs and benefits of different alternatives for creating or modifying fishery management actions. These materials must be submitted to NOAA and the Secretary of Commerce for review and approval as part of an FMP/Amd development process. The eligibility criteria and sustainability plan requirements must also be reviewed and approved by the Secretary of Commerce before fishing communities or regional fishery associations may prepare sustainability plans and receive limited access privileges. To avoid a second review, these requirements may be submitted to NOAA for Secretarial review and approval as part of the FMP/Amd package.

In conjunction with submitting the eligibility criteria and community sustainability plan/regional fishery association plan requirements, NMFS may also need to complete an information collection request under the Paperwork Reduction Act (PRA). This requirement is triggered if the collection involves “identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons”<sup>17</sup> (§ 1320.(c)). Further, “any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons” (§ 1320.(c)(4)(ii)).

The PRA requires a Council to obtain approval to collect information from the public pertaining to a regulatory or management action, where the collection meets the above criteria. For actions that involve FC or RFA entities, the information collection request under the PRA should specifically request permission to collect community sustainability plans from prospective fishing community entities and regional fishery association plans from prospective RFA entities. The exact request will depend on the community sustainability/regional fishery association plan requirements for the given FMP/Amd.

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<sup>17</sup> This document assumes that an FC or RFA represents a single respondent, regardless of how many members it has. Therefore an information collection request under the Paperwork Reduction Act is only required if a Council expects that 10 or more FC/RFA entities will be established or if all or a substantial majority of an industry (a fishery as defined in a FMP counts as an industry) has the option to be involved in a FC or RFA quota holding entity.

## CONCLUSION

FC and RFA entities represent an important and innovative management tool to anchoring limited access privileges in fishing communities and helping ensure the economic and cultural sustainability of these important places. They were added to the MSA in 2007 to allocate limited access privileges to fishing communities and regional entities in LAPP fisheries. That no Council has applied these provisions in the subsequent 6 years has been partially attributed to the lack of sufficient guidance on how to use the tools. This document provides advice on: (1) considerations for developing eligibility criteria; (2) potential elements to include in the prerequisite community sustainability and regional fishery association plans; and (3) a process and timeline associated with creating these entities within new or existing fishery management plans. By applying the tools made available in the MSA, Councils can adopt FC and RFA entities to maintain and support small vessel operators, new entrants, and fleet diversity, as well as allow greater flexibility in the application of limited access privileges. The precedents and experiences of FC and RFA-like associations in many fisheries point out that the perceived impediments to adoption of such tools in LAPP fisheries can be overcome. Moreover, the case studies and their shared attributes confirm that sustainability of fishing communities is important and attainable for both catch share and non-catch share fisheries.

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## APPENDIX A. SECTION 303A(C)(3) AND (4) OF MSA

The section below contains the language in Section 303A:

### *(3) Fishing Communities*

#### *(A) In General –*

- i. Eligibility – To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall –*
  - I. Be located within the management area of the relevant Council;*
  - II. Meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;*
  - III. Consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council management area; and*
  - IV. Develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.*

#### *(B) Participation Criteria – In developing participation criteria for eligible communities under this paragraph, a Council shall consider –*

- i. Traditional fishing or processing practices in, and dependence on, the fishery;*
- ii. The cultural and social framework relevant to the fishery;*
- iii. Economic barriers to access to [sic] fishery*
- iv. The existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;*
- v. The expected effectiveness, operational transparency, and equitability of the community sustainability plan; and*
- vi. The potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.*

### *(4) Regional Fishery Associations*

#### *(A) In General – To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall –*

- i. Be located within the management area of the relevant Council;*

- 42           ii.    *Meet criteria developed by the relevant Council, approved by the*
- 43                 *Secretary, and published in the Federal Register;*
- 44           iii.   *Be a voluntary association among willing parties<sup>18</sup> with established by-*
- 45                 *laws and operating procedures;*
- 46           iv.    *Consist of participants in the fishery who hold quota share that are*
- 47                 *designated for use in the specific region or subregion covered by the*
- 48                 *regional fishery association, including commercial or recreational fishing,*
- 49                 *processing, fishery-dependent support businesses, or fishing communities;*
- 50           v.     *Not be eligible to receive an initial allocation of limited access privilege*
- 51                 *but may award such privileges after the initial allocation, and may hold*
- 52                 *the annual fishing privileges of any limited access privileges it holds or*
- 53                 *the annual fishing privileges that is [sic] members contribute; and*
- 54           vi.    *Develop and submit a regional fishery association plan to the Council and*
- 55                 *the Secretary for approval based on criteria developed by the Council that*
- 56                 *have been approved by the Secretary and published in the Federal*
- 57                 *Register.*

58  
59       (C) *Participation Criteria – In developing participation criteria for eligible communities*  
60       *under this paragraph, a Council shall consider –*

- 61
- 62           i.    *Traditional fishing or processing practices in, and dependence on, the*
- 63                 *fishery;*
- 64           ii.   *The cultural and social framework relevant to the fishery;*
- 65           iii.   *Economic barriers to access to [sic] fishery*
- 66           iv.    *The existence and severity of projected economic and social impacts*
- 67                 *associated with implementation of limited access privilege programs on*
- 68                 *harvesters, captains, crew, processors, and other businesses substantially*
- 69                 *dependent upon the fishery in the region or subregion;*
- 70           v.     *The expected effectiveness, operational transparency, and equitability of*
- 71                 *the community sustainability plan; and*
- 72           vi.    *The potential for improving economic conditions in remote coastal*
- 73                 *communities lacking resources to participate in harvesting or processing*
- 74                 *activities in the fishery.*

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<sup>18</sup> This criterion was amended by PL 110-161 Section 529 to include the words “among willing parties.”

## APPENDIX B. ALIGNMENT BETWEEN FMP/AMD ANALYSES AND FC/RFA “PARTICIPATION CRITERIA” CONSIDERATIONS

In determining eligibility criteria for FC and RFA entities, Councils are required to consider six “participation criteria.” The table below provides an overview of these criteria in relationship to the socioeconomic analyses conducted during FMP/Amd actions. Each of the analyses can be used to inform Councils understanding of one or more of the criteria.

Section 303A(c)(3) and (4)		Pre-existing Legislative Framework		
	Participation criteria (i–vi)	RIR <sup>19</sup>	SIA <sup>20</sup>	RFAA <sup>21</sup>
<b>i</b>	Traditional fishing or processing practices in, and dependence on, the fishery	✓	✓	✓
<b>ii</b>	The cultural and social framework relevant to the fishery		✓	
<b>iii</b>	Economic barriers to access [a] fishery	✓	✓	✓
<b>iv</b>	The existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion	✓	✓	✓
<b>v</b>	The expected effectiveness, operational transparency, and equitability of the community sustainability plan		✓	
<b>vi</b>	The potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities <sup>22</sup>			✓
<b>vii</b>	Administrative and fiduciary soundness <sup>23</sup>			

<sup>19</sup> Regulatory Impact Review (RIR) – The RIR is authorized by E.O. 12866 and is generally incorporated into the FEIS. Economic impact analysis is based on NEPA, the MSA, the RFA, SBREFA, E.O. 12866 and is based on NOAA Guidelines For Economic Review of Regulatory Actions, (<http://www.nmfs.noaa.gov/op/pds/documents/01/111/01-111-05.pdf>)

<sup>20</sup> Social Impact Analysis (SIA) – The SIA is authorized by NEPA, the FIS section of the MSA, as well as Sections 303(a)(9) and 303(b)(6) and 303A, and the definition of optimum yield and E.O. 12898 and builds on the NOAA SIA Guidelines from 2007 ([http://www.nmfs.noaa.gov/sfa/reg\\_svcs/NMFSI\\_01-111-02.pdf](http://www.nmfs.noaa.gov/sfa/reg_svcs/NMFSI_01-111-02.pdf)) Like the RIR, it is generally incorporated into the FEIS.

<sup>21</sup> Regulatory Flexibility Act Analysis (RFAA) – The RFAA is authorized by the Regulatory Flexibility Act (RFA) and it is typically presented in combination with the RIR in the FEIS.

<sup>22</sup> FCs only

<sup>23</sup> RFAs only

